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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT ALFRED CORMIER,

Defendant and Appellant.

A145388

(Solano County
Super. Ct. No. VCR220622)

Appellant Albert Alfred Cormier was placed on probation after he pleaded guilty to a felony weapon offense. He contends the trial court abused its discretion when it required him to submit to drug testing as a condition of probation because the crime for which he was convicted was unrelated to drug use. We affirm.

I. BACKGROUND

On April 13, 2014, a Vallejo Police Department officer stopped appellant after observing him riding a bicycle against traffic. A search revealed appellant was carrying a nine-millimeter handgun. Appellant had been convicted of misdemeanor battery under Penal Code section 242¹ in July 2008.

A complaint was filed charging appellant with a felony count of “unlawful firearm activity” in violation of section 29805 (possession of a firearm within 10 years of having been convicted of a qualifying misdemeanor) and a misdemeanor count of possessing an unmarked firearm in violation of section 23920. Appellant was also separately charged with inflicting corporal injury on a spouse or cohabitant in violation of section 273.5,

¹ Further statutory references are to the Penal Code unless otherwise indicated.

based on a physical altercation with his girlfriend on April 14, 2013. Appellant pleaded no contest to the felony violation of section 29805 in exchange for a dismissal of all other charges. As a condition of the plea, appellant was to serve 90 days in jail and be placed on felony probation. Appellant entered a “Harvey waiver” (*People v. Harvey* (1979) 25 Cal.3d 754), thus allowing the court to consider the dismissed counts when imposing sentence. (See *People v. Goulart* (1990) 224 Cal.App.3d 71, 80.)

The probation report prepared in anticipation of the sentencing hearing noted appellant (then 25 years old) “was subject to substance abuse treatment as a juvenile; however, he has not had any intervention as an adult.” Appellant told the probation officer he used to smoke marijuana and had done so on “New Year’s” (four months prior), but he had “decided to remain clean” because he was trying to find a job. Appellant denied having a problem with alcohol or using any other drugs besides marijuana. His criminal history included an adult conviction for misdemeanor battery under section 242 and juvenile adjudications for aggravated assault under section 245, subdivision (a)(1), receiving stolen property under section 496, subdivision (a), possession of a controlled substance under Health and Safety Code section 11350, subdivision (a), taking or driving a vehicle under Vehicle Code section 10851, subdivision (a), resisting arrest under section 148, subdivision (a)(1), and possession of drug paraphernalia under Health and Safety Code section 11364.

As contemplated by the plea agreement, the trial court suspended the imposition of sentence and placed appellant on probation for three years, subject to his serving 90 days in county jail. After noting appellant’s admitted use of marijuana a few months earlier and his juvenile history of drug treatment, the court ordered appellant to abstain from illegal drug use, including marijuana, and to submit to drug testing at the direction of the probation officer or any peace officer. Defense counsel objected to the drug conditions: “[Appellant] is 25 years old, and I don’t think that the juvenile record is sufficient for a basis for those drug terms. And I also don’t believe that there is a nexus between the marijuana use and the unlawful firearm activity.” The trial court responded that appellant

had acknowledged using marijuana on New Year's and the drug conditions were "part of the rehabilitation process."

II. DISCUSSION

Appellant argues the drug-testing probation condition must be stricken because the record does not contain any evidence he was using drugs when he committed the firearm offense for which he was convicted or the dismissed charges the court was permitted to consider due to his *Harvey* waiver. While we agree there was no direct connection between drug use and the offenses before the court, we disagree the drug testing condition was invalid.

When granting probation, the court may impose reasonable conditions "generally and specifically for the reformation and rehabilitation of the probationer." (§ 1203.1, subd. (j).) "We review conditions of probation for abuse of discretion. [Citations.] Generally, '[a] condition of probation will not be held invalid unless it: "(1) has no relationship to the crime of which the offender was convicted; (2) relates to conduct which is not in itself criminal; and (3) requires or forbids conduct which is not reasonably related to future criminality. . . ." [Citation.]' [Citation.] This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality. [Citation.]" (*People v. Olguin* (2008) 45 Cal.4th 375, 379–380, citing *People v. Lent* (1975) 15 Cal.3d 481, 486; see *People v. Balestra* (1999) 76 Cal.App.4th 57, 68–69 [search condition is intended to ensure probationer obeys all laws and serves a valid rehabilitative purpose, even when the underlying offense does not involve theft, narcotics or firearms].)

The trial court in this case imposed the drug-testing condition because appellant had a history of substance abuse treatment as a juvenile and had admitted to using marijuana four months earlier. Appellant's juvenile history included wardship findings based on his possession of illegal drugs and paraphernalia, and his current conviction

involved the possession of a firearm, an act that can be particularly dangerous when someone is under the influence of drugs. The trial court did not abuse its discretion in requiring him to submit to periodic drug testing to determine whether he was reverting to criminal behavior.

In *People v. Beagle* (2004) 125 Cal.App.4th 415 (*Beagle*), the court considered a challenge to drug conditions imposed upon a probationer who had pled guilty to weapon possession in exchange for the dismissal of a charge of possessing methamphetamine for sale. (*Id.* at p. 418.) The drug count could not be considered for sentencing purposes due to the absence of a *Harvey* waiver, and the defendant claimed the drug conditions were not reasonably related to the weapon possession count. (*Id.* at pp. 419–421.) Because it was unclear whether the drug conditions had been based on the dismissed drug charge in violation of *Harvey*, the Court of Appeal remanded the case to the trial court “for a determination of whether to reimpose the drug-related conditions of probation on the basis of facts other than those that formed the basis of the drug possession charge.” (*Id.* at pp. 423–424.) The court rejected the defendant’s argument that the conditions could not be imposed because they were not reasonably related to the weapon count: “The drug conditions—even those prohibiting conduct not criminal in itself—obviously relate to future criminality, namely, future use of illegal drugs. . . .” (*Id.* at p. 419.) The defendant’s suggestion to the contrary was “easily rebutted under well-settled principles.” (*Id.* at p. 419.)

Appellant characterizes the above quoted language from *Beagle* as dicta and urges us to reach a different conclusion regarding the relationship between drug conditions and future criminality. We find the reasoning of *Beagle* to be persuasive and its facts to be comparable to this case, regardless of whether the relevant discussion is technically a part of the court’s holding in that case. (See *People v. Valencia* (2011) 201 Cal.App.4th 922, 929.) Appellant also argues that *Beagle* is distinguishable because it involved the following “drug-related facts” not present here: “Defendant, who was 32, used marijuana, alcohol and methamphetamine between the ages of 17 and 19 and continued to drink beer occasionally; he did not consider himself a drug addict, but was currently

taking substance abuse classes; and he had a prior conviction for public intoxication.” (*Beagle, supra*, 125 Cal.App.4th at p. 423.) Like appellant, the defendant in *Beagle* committed a weapon offense, having had a documented history of drug use several years earlier. The differences between the *Beagle* defendant’s substance abuse history and appellant’s are not materially significant and do not render the trial court’s decision in this case an abuse of discretion.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

BRUINIERS, J.

(A145388)